

## REMARKS

In the Office Action of July 26, 2004, claims 1, 2, 3, 5, 10, 12, 13, 20 and 25 were rejected under 35 U.S.C. § 102(b) as being anticipated by Jackson (U.S. Patent No. 3,490,447).

Claims 4, 15 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jackson in view of Springett, et al. (U.S. Patent No. 6,102,039).

Applicant respectfully traverses the 35 U.S.C. § 102(b) rejection to claim 1 in view of Jackson. Respectfully, Jackson does not disclose or render obvious a face mask that includes a body portion that is configured so that the air of respiration is drawn through the body portion. This feature of the body portion is set forth on line 4 of claim 1 of Applicant's application.

Jackson discloses a surgical mask that includes protuberances 5 that extend from an internal layer 4 of the surgical mask that rests against the wearer's skin and define tortuous passages when worn by the user (see Jackson at col. 2, line 68 – col. 3, line 3). The protuberances 5 provide an increased interior surface area next to the face of the wearer for promoting condensation (see Jackson at col. 1, lines 71-72). The passageways formed by the protuberances 5 improve both the probability of capturing air-born droplets and also increase the degree of condensation in the surgical mask to provide for a surgical mask that is substantially cooler than previous masks (see Jackson at col. 2, lines 1-4).

However, the body portion of the mask in Jackson is not made from a material through which the air of respiration may be drawn. The mask in Jackson is made of a metal foil or plastic sheet so as to help carry the heat of the face and breath away from the user as well as to promote condensation (see Jackson at col. 1, lines 67-71). The mask may be alternatively configured as being made of two sheets of metal foil, such as aluminum foil, laminated to one another (see Jackson at col. 2, lines 23-25). Instead of drawing air through the mask 5, the mask of Jackson is designed so that air is inhaled and exhaled through gaps formed by the tortuous passageways at the peripheral edge of the mask (see Jackson at column 4, lines 52-57; and Fig. 1 of Jackson that shows the protuberances 5 forming part of the peripheral edge of the mask).

Further, it would not have been obvious for one having ordinary skill in the art to modify the mask of Jackson so that the mask includes a body portion that is configured so that the air of respiration may be drawn through the body portion as set forth in claim 1 of Applicants' application. The principle of operation in Jackson is to provide for a mask that filters contaminants through principles of condensation and impingement, rather than through filtration (see Jackson at col. 1, l line 50-53). To reduce contaminants by way of condensation, Jackson teaches protuberances 5 that form a random set of tortuous, elongated, breathing passageways that increase the degree of condensation and improve the probability of impingement (see Jackson at col. 1, line 72- col. 2, line 4). As such, the entire principle of operation in Jackson is to have air pushed through the tortuous passageways defined by the protrusions 5. If Jackson were modified so that the air of respiration were passed through the material of the mask, instead of moving through the tortuous passageways defined by the protrusions 5, the entire purpose and stated improvements of Jackson would be defeated. It would not have been obvious for one having ordinary skill in the art to modify Jackson to arrive at the structure set forth in claim 1 of Applicant's application because doing so would completely frustrate the intended purpose of the invention in Jackson.

As such, Applicant respectfully submits that claim 1 defines over Jackson and is in condition for allowance. Further, all claims that depend from claim 1 (claims 2-5 and 10) are also in condition for allowance. The rejections to claims 2-5 and 10 are made moot due to the allowance of claim 1.

Claim 12 also calls for a body portion that is configured so that the air of respiration is drawn through the body portion. This structure is similar to that called for in claim 1, and Applicant respectfully submits that claim 12 defines over Jackson for the same reasons as discussed above with respect to claim 1 and is in condition for allowance. Also, claims 13, 15, 16, 20 and 25 are also in condition for allowance as their rejections are made moot due to the allowance of independent claim 12 from which they depend.

Applicant respectfully submits that all claims are allowable and that the application is in condition for allowance. Favorable action thereon is respectfully

requested. The Examiner is encouraged to contact the undersigned at his convenience to resolve any remaining issues.

Please charge any additional fees required by this Response to Deposit Account No. 04-1403.

Respectfully submitted,

DORITY & MANNING, P.A.

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Date

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